

REMARKS

This application has been amended in a manner that is believed to place it in condition for allowance at the time of the next Official Action.

Claims 17-25, 30-33 and 37-43 are pending. Independent claims 17 and 30 have been amended to incorporate the subject matter of claims 35 and 36, respectively. New claims 37-43 have been added. Support for claims 37-43 may be found in claims 17-23.

In the outstanding Official Action, claims 17, 23 and 30 were objected to for allegedly containing several informalities. Claims 17, 23 and 30 have been amended as suggested by the Examiner. Applicants thank the Examiner for the suggestions as how to overcome these objections.

Claims 30-33 and 36 were rejected under 35 USC §112, second paragraph, as allegedly being indefinite. This rejection is traversed.

Claim 30 has been amended to provide antecedent basis for the phrase "the tubular element or elements".

Thus, applicants ask that this rejection be withdrawn.

Claims 17-25, 30-33 and 35-36 were rejected under 35 USC §103(a) as allegedly being unpatentable over REED et al. in view of WEISSMAN. This rejection is traversed.

Neither REED nor WEISSMAN disclose or suggest a heating and organic material as set forth in the claimed invention,

wherein the organic material to be heated is located on, or in physical contact with, the heating means itself (e.g., an electrically heated ascending tubular device).

REED describes a heating chamber 17 (see Figure 2), the bottom of which is heated by a combustion chamber 14 and burner 66 which can be fed with the gases generated during pyrolysis in heating chamber 17 (column 5, lines 3-10). Therefore, the temperature in the heating chamber 17 will not be the same throughout (column 13, lines 1-15). The material to be pyrolyzed is indirectly heated by the flow of hot gases which surround vessel 110 containing the conveyor 87 and the material conveyed thereon (column 7, line 28). In other words, uniform heating of the material is not possible under these conditions.

As the Official Action acknowledges on page 4, REED does not disclose a tubular element but an open tray 90 with a lip 91 forming the spiral tray 88 or conveyor 87 (see Figures 3, 5 to 8 and column 6, lines 5-31). This stands in contrast to the definition for "tubular element" given in the specification (e.g., see pages 9 and 10 of the present specification).

Moreover, the Official Action is mistaken when it states that "at least one portion of the pyrolysis gas present at the outlet of the condensation device is reinjected into the reactor (column 12, line 2) where pyrolysis takes place...". The gases produced in REED are not used as a smoke flavoring but as fuel. Rather, the reinjected gases in REED are used as fuel and

are reinjected in the combustion chamber 14 (where they are burnt) not in the heating chamber 17 as stated in current claim 21.

In an effort to remedy the deficiencies of REED for reference purposes, the Official Action cites to WEISSMAN. In WEISSMAN, the material to be pyrolyzed located on the trough 20 is heated with electrical heater bars H while the screw 25 horizontally moves the material from the charging opening 71 to the opening 70 where the remaining ashes drop into the ash hazing 66 (Figure 3).

Thus, contrary to the claimed invention, WEISSMAN neither discloses nor suggests a vibrational ascending movement or ascending tubular element.

Thus, even if one skilled in the art were to combine and modify the publications, the combination of REED and WEISSMAN would not lead to the claimed invention. The publications, alone or in combination, do not provide any reason to use an ascending element that comprises a heating device, much less a heating device that electrically heats organic material as set forth in the claimed invention.

The Supreme Court recently addressed the issue of obviousness in *KSR International Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 167 L.Ed.2d 705 (2007). While the *KSR* Court rejected a rigid application of the teaching, suggestion, or motivation ("TSM") test in an obviousness inquiry, the Court acknowledged

the importance of identifying "a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does" in an obviousness determination. *KSR*, 127 S.Ct. at 1731.

Moreover, the Court indicated that there is "no necessary inconsistency between the idea underlying the TSM test and the *Graham* analysis." *Id.* As long as the test is not applied as a "rigid and mandatory" formula, that test can provide "helpful insight" to an obviousness inquiry. *Id.*

As the proposed combination does not provide any reason to use an ascending tubular element comprising a heating device, or an ascending tubular element comprising heating device that electrically heats organic material as set forth in the claimed invention, applicants submit that one skilled in the art would have lacked a reason to modify the publications to obtain the claimed invention.

As the Official Action fails to provide any reasoning or suggestion as to why one skilled in the art would combine to modify REED with WEISSMAN to obtain a process that utilizes the direct heating of an organic material with an ascending tubular element or elements, applicants respectfully request that the rejection be withdrawn.

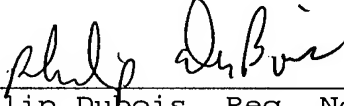
In view of the present amendment and the foregoing remarks, therefore, applicants believe that the application is in condition for allowance at the time of the next Official Action.

Reconsideration and allowance of all the pending claims is respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

YOUNG & THOMPSON


Philip Dubois, Reg. No. 50,696
745 South 23rd Street
Arlington, VA 22202
Telephone (703) 521-2297
Telefax (703) 685-0573
(703) 979-4709

PD/lrs